

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AMANDA TOTTEN,

Plaintiff,

v.

EVERGREEN PROFESSIONAL
RECOVERIES, INC., a Washington
corporation,

Defendant.

NO: 2:14-CV-15-RMP

ORDER DENYING MOTION FOR
RECONSIDERATION

Before the Court is Plaintiff's Motion for Reconsideration. ECF No. 47.

The Court has considered the motion, Defendant's response, and the relevant filings in the docket. The Court is fully informed.

Plaintiff asks the Court to reconsider its Order Denying Plaintiff's Motion for Summary Judgment and Granting Defendant's Cross Motion for Summary Judgment, ECF No. 31. Plaintiff contends that the Court erroneously held that the mailing of a judgment in this matter was not a "communication" pursuant to the Fair Debt Collection Practices Act ("FDCPA"), that it was a bona fide error to send

1 the judgment directly to Plaintiff, and that a question of fact would exist as to
2 whether Defendant should have mailed a copy of the judgment to Plaintiff pursuant
3 to Washington State court rules.

4 Plaintiff filed her motion pursuant to Federal Rule of Civil Procedure 59(e),
5 which governs motions to alter or amend a judgment. Although district courts
6 have discretion in granting or denying motions under Rule 59(e), “amending a
7 judgment after its entry remains ‘an extraordinary remedy which should be used
8 sparingly.’” *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011)
9 (quoting *McDowell v. Calderon*, 197 F.3d 1253, 1255 n. 1 (9th Cir. 1999) (en
10 banc) (per curiam) (internal quotation marks omitted)). Generally, a court may
11 grant a Rule 59(e) motion for any of four reasons:

12 (1) if such motion is necessary to correct manifest errors of law or fact
13 upon which the judgment rests; (2) if such motion is necessary to
14 present newly discovered or previously unavailable evidence; (3) if
such motion is necessary to prevent manifest injustice; or (4) if the
amendment is justified by an intervening change in controlling law.

15 *Id.* However, “[a] Rule 59(e) motion may *not* be used to raise arguments or
16 present evidence for the first time when they could reasonably have been raised
17 earlier in the litigation.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890
18 (9th Cir. 2000)

19 Here, Plaintiff has not presented an adequate basis for the Court to
20 reconsider its prior order. Plaintiff has not offered any authority or evidence that

1 was unavailable at the time of the Court's order, nor has Plaintiff shown that the
2 order contains manifest errors or will result in manifest injustice.

3 Moreover, Plaintiff misinterprets certain portions of the order. Although
4 Plaintiff argues that the Court erroneously held that a judgment is not a
5 "communication," the Court simply concluded that summary judgment in
6 Plaintiff's favor was "inappropriate because Plaintiff has not established that
7 sending a judgment constitutes a prohibited communication under the FDCPA."
8 ECF No. 31 at 7. In other words, the Court merely found that the issue was not
9 resolved as a matter of law in this case.

10 Similarly, Plaintiff's argument that federal law would preempt state court
11 rules is inapposite to the Court's order. According to the Civil Rules for Courts of
12 Limited Jurisdiction ("CRLJ"), subject to restrictions, "[a] party, rather than the
13 party's attorney, must be served if the final judgment or decree has been entered
14 and the time for filing an appeal has expired" CRLJ 5(b)(4). The Court
15 found that this rule could create confusion regarding whether judgment should
16 have been mailed directly to Plaintiff, establishing at least a question of fact
17 regarding whether mailing the judgment was a bona fide error and precluding
18 granting Plaintiff's motion for summary judgment. ECF No. 31 at 6 n.3. Federal
19 preemption would not resolve the factual issue of whether a debt collector made a
20 genuine mistake in light of the state court rule.

1 Although Plaintiff also disagrees with the crux of the Court's decision, that
2 Defendant had established the bona fide error defense, Plaintiff has provided no
3 new evidence or changes in controlling law that might encourage the Court to
4 reconsider its prior order.

5 Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's Motion for
6 Reconsideration, **ECF No. 47**, is **DENIED**.

7 The District Court Clerk is directed to enter this Order and provide copies to
8 counsel.

9 **DATED** this 15th day of December 2014.

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11 *s/ Rosanna Malouf Peterson*
12 ROSANNA MALOUF PETERSON
13 Chief United States District Court Judge
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